

**CAUSE NO 18-DCR-0152****STATE OF TEXAS****IN THE DISTRICT COURT****vs.****§ 344TH JUDICIAL DISTRICT****ZENA COLLINS STEPHENS****§ CHAMBERS COUNTY, TEXAS****DEFENDANT ZENA STEPHENS' MOTION TO COMPEL AND
RESPONSE TO STATE'S MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Zena STEPHENS, by and through her attorney, and files this, her Motion to Compel and Response to the Motion for Protective Order filed by the State and would show the Court as follows:

I. BACKGROUND

This case was indicted on April 26, 2018. A motion for discovery was filed on April 27, 2018. Texas Code of Criminal Procedure 39.14 governs these proceedings. The documents at issue have been in the possession of the State in redacted form since May 30, 2017. The document was not produced until October 25, 2018. The document contained exculpatory material.¹

II. TEXAS CODE CRIM P. 39.14

At a hearing on November 15, 2018, in this matter the trial court indicated its intention to strictly comply with the provisions of Article 39.14, Texas Code of Criminal Procedure. There are several relevant provisions applicable here. Tex. Code Crim. P. 39.14(a) requires that

¹ Exculpatory is used here to signify the Constitutional significance of the material and embraces Tex. Code Crim. P. 39.14(h)'s language of "exculpatory, impeachment, or mitigating." Exculpatory includes impeaching. "Exonerating" as to Count III in the indictment would also be an accurate description of a portion of the non-redacted material produced. It appears that this exonerating evidence was not produced to the Chambers County grand jury.

production be made as soon as practical by the State. Additionally, the statue contains built-in protective order provisions. *See Tex. Code Crim. P. 39.14(e); Powell v. Hocker, 516 SW3d 488, 497 (Tex. Crim. App. 2017)*. As an initial matter, the untimely production and contemporaneous claim of privilege would normally result in waiver of the claim of privilege. Thus, the Defendant requests that the claim of law enforcement privilege be overruled or withdrawn. Moreover, there is no legitimate “unfettered disclosure” concern.

The primary concern of this proceeding is to ensure the protection of the Constitutional rights of the participants. The Attorney General’s argument that disclosure could harm elected officials is ironic after having indicted an elected official and two others who were running for the office, tweeting about the indictment, and failing to timely produce the exculpatory information. The inescapable reality is that election irregularities such as those alleged here are normally handled in a civil context by the Texas Ethics Commission. The reality is that information such as that sought here is generally disclosed without dispute. Acquiesce to a request for special treatment is unwarranted.

There are narrow and limited circumstances under which a Court should enter an order restricting speech. *See e.g., In Re Clendennen, 2018 Tex App. LEXIS 2074; In Re Hearst News Paper Partnership, 240 S.W.3rd 190 (Tex. Ct. App. 2007)*. Additionally, there can be First Amendment implications associated with such an order.

III. THE 302 AT ISSUE

The disclosed redacted 302’s at issue contained exculpatory material and identified much of the material raised as a “concern” in the motion for protective order. The unredacted portion of the 302s is expected to contain additional exculpatory material. The Court must permit discovery of

exculpatory information. *See In Re Hartman 429 SW3d 680, 682 (Tex. App.-Beaumont 2014 original proceeding)(“Decisions regarding information that is exculpatory, mitigating or privileged are not discretionary”)* The Court should order the disclosure of the redacted material pursuant to Tex.R. Civ P. 39.14 (c).

IV. PREVIOUSLY KNOWN FACTS

The referenced 302 is not the sole source of the information contained therein. It is not a spy report. There are no security clearances associated with the document. It is an interview of a central witness in the case. Counsel has learned of some information likely in the referenced 302 from other sources. Thus, if the proposed protective order were granted counsel could in effect be prevented from disclosing information that he knew independent of the 302 at issue here.

V. ONE COPY RULE

Counsel for Ms. Stephens office in Dallas, Houston and Beaumont. The proposal that one copy of the document exist is not practical and adversely impacts her 6th Amendment right to effective assistance of counsel.

WHEREFORE, Ms. Stephens prays that this Court grant her Motion to Compel and enter an order that the State timely produce the material set forth in Tex. Code Crim. P. 39.14(a),(b) (h) and further find that failure of the State to comply with the provision of Tex. Code Crim P. 39.14(a),(h) will effectively deny Ms. Stephens due process. Further, that the Court deny the motion for protective order finding that the existing provisions of the Tex. Code Crim P. 39.14 provide access and protection appropriate for this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 9, 2019 a true and correct copy of Response on States Motion for Protective Order was served on the Texas Attorney General by electronic service through the electronic filing manager.

/S/ Russell Wilson II
Russell Wilson II